



January 27, 2000

Mr. Thomas F. Keever
Assistant District Attorney
P. O. Box 2850
Denton, Texas 76202

OR2000-0271

Dear Mr. Keever:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 131728.

The Office of the Honorable Kirk Wilson of the Denton County Commissioners Court (the "office") received a request for information relating to twenty-one enumerated items for the date of November 12, 1999. You argue that the office of the Denton County Judge is a judicial office that is not a governmental body subject to the Public Information Act. In addition, you argue that the request is impermissibly "overbroad and generalized." Finally, you argue that two documents, both electronic correspondence, are excepted from disclosure based on sections 552.101 and 552.103, 552.105, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You first assert that the office of the county judge is not a governmental body, as defined by section 552.003(1)(A) of the Government Code, and instead is a judicial office that is excluded from the scope of Chapter 552 of the Government Code (the "Public Information Act"). You argue that the office of the county judge is not subject to the Public Information Act (1) because it is not a "governmental body," as defined by section 552.003(1)(A) of the Government Code, and (2) because it is a judicial office, and under the Act "governmental body" . . . does not include the judiciary." Gov't Code § 552.003(1)(B). This office addressed substantially the same contention in Open Records Decision No. 204 (1978). There, a county judge had received a request for records relating to his correspondence with

constituents and to reimbursement of his expenses by the county. He contended that he was a member of the judiciary and therefore was excluded from the scope of the former Open Records Act, article 6252-17a of Vernon's Texas Civil Statutes. This office noted that, under the former Act, the definition of "governmental body" encompassed both "the commissioners court of each county" and "the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds[.]" ORD 204 at 1, (quoting V.T.C.S. art. 6252-17a, § (2)(1)(B), (F)). We also acknowledged that, under the Act, "the Judiciary [was] not included within [the definition of governmental body]." *Id.*, quoting V.T.C.S. art. 6252-17a, § (2)(1)(G). We pointed out, however, that "[t]he county judge is judge of the county court, and also is presiding officer of the commissioners court," *id.*, and as such "is not a judicial officer only." *Id.* at 2, quoting *Clark v. Finley*, 54 S.W. 343 (Tex. 1899). Based on these considerations, we concluded:

The commissioners court is expressly included in the definition of governmental body . . . and the county judge is a part of the commissioners court. . . . Section 2(1)(F) makes every part of an organization, institution or agency supported by public funds a governmental body and subject to the [Open Records] Act. Accordingly, we believe each component of the commissioners court, *including the county judge*, is subject to the Act.

We do not believe that there is an irreconcilable conflict within the definition of 'governmental body' as to its application to the county judge as part of the commissioners court, and its exclusion of the judiciary from the Act. *We believe that information held by the county judge is subject to the Open Records Act except to the extent it pertains to cases and proceedings before the county court.* This construction of the Act is consistent with both the requirement that it be liberally construed in favor of granting any request for information and the exclusion of the judiciary from the Act.

ORD 204 at 2 (emphasis added). Since the issuance of Open Records Decision No. 204, there has been no fundamental change in either the constitutional responsibilities of a county judge or the operative language of the Public Information Act.¹ See Tex. Const. Art. V, §§ 15, 16, 17, 18; Gov't Code §§ 552.001, 552.003(1)(A)(ii), (x) and (B); see also *Benavides v. Lee*, 665 S.W.2d 151, 152 (Tex. App.--San Antonio 1983, no writ) ("The intent of the Open Records Act must not be circumvented by an unnecessarily broad reading of the

¹The Public Information Act was codified as chapter 552 of the Government Code, and the former article 6252-17a of Vernon's Texas Civil Statutes was repealed, by the Seventy-third Legislature. The codification of the former Open Records Act was a non-substantive revision. See Act of May 4, 1993, 73rd Leg., R.S., ch. 268, § 47, 1993 Tex. Gen. Laws 583, 986.

judiciary exclusion”).² Accordingly, we conclude that, to the extent that the requestor seeks information that does not pertain to cases and proceedings before the constitutional county court, the office of the County Judge of Denton County is subject to the requirements of chapter 552 of the Government Code.

You also contend that the Public Information Act does not require a governmental body to provide access to information requested on such a broad, generalized basis. Rather, citing section 552.222 of the Government Code as authority, you contend that the requestor should be required to narrow the scope of his request to specify the type of correspondence sought or the specific subject matter of the requested correspondence.

It is well-established that a governmental body may not disregard a request for records made pursuant to the Public Information Act merely because a requestor does not specify the exact documents desired. A governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 561 at 8-9 (1990), 87 (1975). Section 552.222(b) of the Government Code, however, provides that if a governmental body is unable to determine the nature of the records being sought, it may ask the requestor to clarify the request so that the desired records may be identified.

However, section 552.222(b) does not stand for the proposition that a request may be denied merely because it seeks a broad range of documents. The purpose of this section is to authorize a dialogue between the governmental body and the requestor regarding the scope of the records request.³ Open Records Decision No. 663 (1999). When a requestor makes a vague or broad request, the governmental body should make a good faith effort to advise the requestor of the type of documents available so that the requestor may narrow or clarify the request. *See id.* at 5.

We have reviewed the request for information submitted to the county judge. The request specifies the physical or other form of the information, the subject matter of the information,

²For other instances in which this office has construed the judiciary exception to the Public Information Act and its predecessor statute, *see* Open Records Decision Nos. 646 (1996) (notwithstanding involvement of district judges in its administration, community supervision and corrections department is governmental body and not part of judiciary); 572 (1990) (Bexar County Personal Bond Office is governmental body and not within judiciary exception); 527 (1989) (Court Reporters Certification Board; same). In *Benavides v. Lee*, the Court of Appeals held the Webb County Juvenile Board to be subject to the Open Records Act, even though the board members included members of the judiciary and the county judge. *See Benavides*, 665 S.W.2d at 151-52.

³Section 552.222(b) also limits the nature of the inquiries by the governmental body to those regarding the requested documents themselves. This section prohibits the governmental body from inquiring into the purpose for which the requestor seeks the records.

and the time frame for the creation or receipt of the requested information. The requestor states that, with certain limitations, he wants access to each document produced or received by the county judge and his office regarding certain matters on November 12, 1999.⁴ The request, while encompassing numerous facets of county business, is sufficiently clear and understandable to inform the county judge of the records being requested, as is evidenced by your ability to identify responsive records. Therefore, the office may only withhold the submitted information if it falls under an exception to required disclosure under the Public Information Act.

In regard to the electronic correspondence concerning an acquisition of a right-of-way, you argue that it is excepted under sections 552.101, 552.103, and 552.105. However, you have not explained the applicability of section 552.101 or 552.103 to the submitted information. Accordingly, we conclude that you may not withhold this document under either exception.

Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information excepted under section 552.105 that pertains to such negotiations may be excepted so long as the transaction is not complete. Open Records Decision No. 310 (1982). Because this exception extends to "information pertaining to" the location, appraisals, and purchase price of property, it may protect more than a specific appraisal report prepared for a specific piece of property. Open Records Decision No. 564 at 2 (1990). For example, this office has concluded that appraisal information about parcels of land acquired in advance of others to be acquired for the same project could be withheld where this information would harm the governmental body's negotiating position with respect to the remaining parcels. *Id.* A governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and negotiating position in regard to particular transactions.'" Open Records Decision No. 357 at 3 (1982) (quoting Open Records Decision No. 222 (1979)). When a governmental body has made a good faith determination that the release of information would damage its negotiating position with respect to the acquisition of property, the attorney general will accept that determination unless the records or other information show the contrary as a matter of law. Open Records Decision No. 564 (1990). Here, you have not stated, and the information at issue does not indicate, that release of the information would damage the office's negotiating position. Moreover, the information does not reveal any information pertaining to the purchase price of the property, or the property's location. Consequently, the correspondence is not excepted under section 552.105, and the office must release it to the requestor.

⁴The requestor has excluded from the scope of his request "mass mailings or pre-printed materials intended for wide distribution . . . [and] personal e-mails between co-workers not concerning the transaction of official Denton County business."

In regard to the second correspondence, you argue that it is excepted under sections 552.101, 552.103, and 552.107. Again, you have not explained the applicability of section 552.101 or 552.103 to the submitted information. Accordingly, we conclude that you may not withhold this document under either exception.

Section 552.107(1) of the Government Code excepts from disclosure information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only “privileged information,” that is, information that reflects either confidential communications from the client to the attorney or the attorney’s legal advice or opinions; it does not apply to all client information held by a governmental body’s attorney. Open Records Decision No. 574 at 5 (1990). When communications from attorney to client do not reveal the client’s communications to the attorney, section 552.107(1) protects them only to the extent that such communications reveal the attorney’s legal opinion or advice. Open Records Decision No. 574 at 3 (1990). In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We agree that this correspondence is excepted under section 552.107(1). Therefore, the office may withhold this correspondence.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at

877/673-6839. The requestor may also file a complaint with the district or county attorney.
Id. § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body.
Id. § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 131728

Encl: Submitted documents

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